

INTRODUCED: February 12, 2018

AN ORDINANCE No. 2018-035

To authorize the Chief Administrative Officer, on behalf of the City of Richmond, to execute a License Agreement between the City of Richmond as Licensor and the Monroe Park Conservancy as Licensee for the purpose of facilitating the completion of certain improvements approved by the City at Monroe Park located at 719 West Franklin Street in the city of Richmond.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: FEB 26 2018 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, on behalf of the City of Richmond, is hereby authorized to execute a License Agreement between the City of Richmond as Licensor and the Monroe Park Conservancy as Licensee for the purpose of facilitating the completion of certain improvements approved by the City at Monroe Park located at 719 West Franklin Street in the city of Richmond. Such License Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: FEB 26 2018 REJECTED: _____ STRICKEN: _____

§ 2. This ordinance shall be in force and effect upon adoption.



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

O & R REQUEST

4-7410

JAN 5 2018

Office of the Chief Administrative Officer

O&R REQUEST

DATE: January 4, 2018 EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor [Signature]

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

THROUGH: Bobby Vincent, Jr. Director of Public Works [Signature]

FROM: Don Summers, Chief Capital Projects Manager, Department of Public Works [Signature]

RE: License Agreement between the Monroe Park Conservancy and the City of Richmond

ORD. or RES No.

PURPOSE: To authorize the Chief Administrative Officer, on behalf of the City of Richmond, to execute a license agreement with the Monroe Park Conservancy.

REASON: This license agreement will serve as a right of entry for the Monroe Park Conservancy to complete certain improvements on the Monroe Park property. This is necessary because the effective term of the existing Agreement and Deed of Lease does not begin until all of the initially planned improvements are complete.

RECOMMENDATION: The Administration recommends approval.

BACKGROUND: In 2014 City Council unanimously approved the Agreement and Deed of Lease between the City and the Monroe Park Conservancy to facilitate improvements to Monroe Park.

FISCAL IMPACT/COST: N/A.

FISCAL IMPLICATIONS: N/A.

BUDGET AMENDMENT NECESSARY: No.

REVENUE TO CITY: N/A

RECEIVED

FEB 07 2018

OFFICE OF CITY ATTORNEY

DESIRED EFFECTIVE DATE: Upon Adoption.

REQUESTED INTRODUCTION DATE: January 22, 2018

CITY COUNCIL PUBLIC HEARING DATE: February 20, 2018

REQUESTED AGENDA: Consent Agenda.

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing, & Transportation

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: N/A.

AFFECTED AGENCIES: N/A.

RELATIONSHIP TO EXISTING ORD. OR RES.: 2014-10-50

REQUIRED CHANGES TO WORK PROGRAM(S): None.

ATTACHMENTS: License Agreement between the Monroe Park Conservancy and the City of Richmond.

STAFF: Don Summers, Chief Capital Projects Manager, DPW



CITY OF RICHMOND

REQUEST FOR APPROVAL

OFFICE USE ONLY

Received

JUN 5 2018

4-7884

Office of the

Chief Administrative Officer

To: **Selena Cuffee-Glenn**
Chief Administrative Officer

From: Donald R. Summers *DRS 6/11/18*

Date Submitted: 6/11/18

Requesting Agency's Assertion:

I, Donald R. Summers, Chief Capital Projects Manager, have reviewed the attached documents for accuracy and completeness, and therefore request the signature of the Chief Administrative Officer.

Request for Approval/Signature Summary

Document Title	Ordinance #2018-035
Requested by Date	6/15/18
Impact on the City	None
Return signed document(s) to	Donald R. Summers, Chief Capital Projects Manager <i>X6284</i>

Background & Notes for attached document (*if applicable*):

Right of Entry Amendment to Existing (O&R 2014-10-50) Lease Agreement between the City of Richmond and the Monroe Park Conservancy_____

Director of Public Works: *[Signature]*_____

Received

JUN 5 2018

4-1884

Office of the
Chief Administrative Officer

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made this 15th day of June, 2018, between the City of Richmond, Virginia a political subdivision of the Commonwealth of Virginia (the "City"), and Monroe Park Conservancy, a Virginia non-stock corporation (the "Conservancy").

STATEMENT OF PURPOSE

- A. The City is the owner of certain real property on which Monroe Park is located in the city of Richmond, Virginia.
- B. The Monroe Park property is the subject of an Agreement and Deed of Lease ("Lease") dated May 1, 2014, between the City and the Conservancy, the term of which is to commence upon substantial completion of certain improvements ("Lease Commencement Date").
- C. The Conservancy desires to complete, at its own expense, certain improvements not contemplated under the Lease, specifically, Checker House upgrades, the installation of a pavilion and "Portland Loo" (collectively, the "Improvements") and other improvements undertaken by the Conservancy and approved by the City.
- D. The Improvements are expected to be completed prior to the Lease Commencement Date.

The City and the Conservancy, intending to be legally bound, agree as follows:

1.0 License.

1.1 Scope.

- 1.1.1 **Meaning of "Property."** For purposes of this Agreement, "Property" means the certain real property on which Monroe Park is located in the city of Richmond, Virginia, as the same is more particularly described in Exhibit A, attached hereto and made a part hereof.
- 1.1.2 **Grant of License.** For the duration of this Agreement as set forth in section 1.2, the City hereby grants to the Conservancy, and its agents, contractors, employees, invitees, officers, and volunteers a license to enter the Property for the purpose of enabling the Conservancy to complete the Improvements, which are more fully described in Exhibit B attached hereto and made a part hereof.
- 1.1.4 **No Relationship between Parties.** The City and the Conservancy agree that, for purposes of this Agreement, the Conservancy is in no way to be considered an employee, partner, agent, or associate, whether by joint venture or otherwise, of the City in the conduct of the intended reason for access.

- 1.1.5 **AS IS Condition of Building and Property.** The Conservancy has studied and inspected the Property and accepts the same "AS IS" without any express or implied warranties of any kind.
- 1.2 **Duration.** The right of entry granted by this Agreement, and all terms and conditions contained herein, will terminate automatically upon final completion of the Improvements or the Lease Commencement Date, whichever comes first.
- 1.3 **Termination.** Either party may terminate this Agreement at will by giving notice to the other party.
- 1.4 **Costs of Improvements.** The Conservancy acknowledges and agrees that it shall bear all costs, responsibilities, and risks associated with the construction of the Improvements, and that no contributions of any kind, cash or otherwise, shall be required from the City for Improvements, under any circumstances.
- 1.5 **Title.** All title, right, and interest in the Improvements all other improvements on the Property and fixtures situated thereon shall and any and all alterations, changes, and additions thereto now or hereafter constructed shall remain solely vested in the City.
- 2.0 **Standards and Requirements.**
- 2.1 **Standards of Construction.** The Conservancy shall cause the construction of Improvements according to all applicable laws, rules, and regulations and in a good and workmanlike manner free from defects.
- 2.2 **Repairs.** The Conservancy shall repair any damage to the Property to the satisfaction of the City and shall return the Property in a condition satisfactory to the City as determined by the City in its reasonable discretion. This section 2.2 will survive the termination of this Agreement.
- 2.3 **Utility Protection.** During construction of the Improvements, the Conservancy shall protect all private and publicly owned utilities located on the Property and shall not permit any utilities interruption.
- 3.0 **Liability.**
- 3.1 **Release.** The City shall not be liable for any personal injury or property damage to the Conservancy or its agents, contractors, employees, invitees, officers, or volunteers irrespective of how the injury or damage is caused, and the Conservancy hereby releases the City from any liability, real or alleged, for any personal injury or property damage to the Grantee or its agents, contractors, employees, invitees, officers, or volunteers irrespective of how the injury or damage is caused. Nothing herein shall be construed as a waiver of the sovereign immunity granted to the City by the Commonwealth of Virginia statutes and case law to the extent that it applies. This section 3.1 will survive the termination of this Agreement.

3.2 **Indemnity.** The Conservancy shall indemnify and defend the City and its agents, contractors, employees, officers, and volunteers from and against any and all losses, liabilities, claims, damages and expenses, including court costs and reasonable attorneys' fees, caused by, resulting from, or arising out of any claim, action, or other proceeding, including any claim, action or other proceeding initiated or maintained by any of the Conservancy's agents, contractors, employees, invitees, licensees, or volunteers, that is based on or related to (i) the Conservancy's breach of this Agreement, including the breach of any representation or warranty made herein, (ii) the use of the Property by the Conservancy, its contractors, employees, invitees, officers, or volunteers, (iii) the performance of any work on or outside of the Property by the Conservancy or its agents, contractors, employees, invitees, officers, or volunteers, (iv) the presence on or about the Property of or by the Conservancy or its agents, contractors, employees, invitees, officers, or volunteers, (v) the conduct or actions of the Conservancy or its agents, contractors, employees, invitees, officers, or volunteers within or outside the scope of this Agreement, (vi) any error, omission, negligent act or intentional act of the Conservancy or its agents, contractors, employees, invitees, officers, or volunteers. This section 3.2 will survive the termination of this Agreement.

3.3 **Insurance.**

(a) The Conservancy shall cause the contractor constructing the Improvements, and any other contractor entering the on the Property to perform work on the Conservancy's behalf, to procure and keep in force during the term of this Agreement, commercial general liability insurance in a good and solvent insurance company or companies licensed to do business in the Commonwealth of Virginia in a single limit of at least One Million Dollars (\$1,000,000) with respect to bodily injury and property damage. Such policy or policies shall include the City as an additional insured. The Conservancy agrees to deliver certificates of such insurance or a copy of the policy to the City upon the City's reasonable request and to provide a new certificate annually before any previously delivered certificates expire.

(b) The Conservancy shall, during the Term, be responsible for payment of all premiums for insurance coverage required by this Section 3.3. All coverages provided by The Conservancy pursuant to this Section 3.3 shall be primary as to any coverages maintained by the City. All policies shall include a notice of cancellation or non-renewal of at least thirty (30) days.

4.0 **Environmental Conditions, Liability, Indemnity.**

(a) As stated herein, the Conservancy is leasing the Property "AS IS" without warranty or guaranty, except as set forth herein. As used in this Lease, the term "Hazardous Material" means those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or classified by the Environmental Protection Agency as hazardous substances (40 CFR Part 302), or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (1) petroleum, (2) asbestos, (3) polychlorinated biphenyls, (4) designated as a hazardous

substance pursuant to the federal "Clean Water Act", the federal "Resource Conservation and Recovery Act", or the federal "Comprehensive Environment Response", Compensation and Liability Act", (5) excreta or other animal waste, or (6) lead.

(b) Any Hazardous Material to be brought upon or used in or about the Property by the Conservancy or its employees, contractors, subcontractors or agents shall be used, kept, stored and disposed of in a manner that complies with all federal, state and local laws, rules, regulations, directives, decrees, ordinances, codes, orders, approvals of governmental authorities, licenses or standards, including, without limitation, the federal "Comprehensive Environmental Response, Compensation and Liability Act", the federal "Resource Conservation and Recovery Act" and any state and local law, regulation, or ordinance relating to pollution or protection of human safety, health or the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata), including, without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of any Hazardous Material, or otherwise relating to the manufacture, refining, distribution, use, management, treatment, storage, disposal, transport, reeling, reporting or handling of any Hazardous Material (collectively, "Environmental Laws"). In addition, to the extent any environmental permits are required to be obtained by the Conservancy or its employees, contractors or agents, in connection with the Conservancy's use, the Conservancy shall be responsible, at its sole cost and expense, for obtaining such permits and for immediately providing copies of all applications for such permits and copies of all issued permits to the City.

(c) Neither the Conservancy nor its employees, contractors, subcontractors or agents, shall discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by any government authority) does or may, pollute or contaminate the same, or may adversely affect (a) the health, welfare or safety of persons, whether located on the Property or elsewhere, or (b) the condition, use or environment of any other real or personal property.

(d) The Conservancy shall maintain good spill prevention practices as recommended by governmental agencies having jurisdiction over the premises and comply with all applicable regulations and containment practices. Any and all releases, spills, discharges, emissions, etc. caused by the Conservancy on the Property shall be documented by the Conservancy and reported to the City and the appropriate authority under applicable law within twenty-four (24) hours of the occurrence thereof. Immediate steps shall be taken by the Conservancy in the event it causes an uncontained release to minimize the duration, amount and extent of any discharge to the environment. The Conservancy shall require all contractors and subcontractors operating on the Property to maintain, at the Property and available to the City on request, any and all material safety data sheets required by law and pertaining to materials or substances discovered, encountered, brought upon, stored, used or consumed in any construction at the Property, regardless of their source.

(e) If any Hazardous Materials are released into the environment as a result of the actions of the Conservancy or its employees, contractors, subcontractors or agents, the Conservancy shall be responsible, at its sole cost and expense, for completing (or causing completion of) any and all remediation activities that may be required to be undertaken in compliance with any applicable laws. Any required remediation activities shall be completed by the Conservancy in accordance with all applicable laws. The Conservancy's

obligations under this subsection (e) shall survive the expiration or earlier termination of this Agreement.

(f) The Conservancy hereby agrees to defend, indemnify and hold harmless the City (including its officers, directors, employees and agents) from and against all liabilities (including third party liabilities), losses, claims, damages, property damage, demands, judgments, fines or penalties insofar as not prohibited by law, costs and expenses (including, without limitation, clean-up costs and reasonable attorneys' and consultants' fees and disbursements) which arise from (i) the Conservancy's violation of any Environmental Laws, (ii) the Conservancy's compliance with any Environmental Laws relating to or arising out of the Conservancy's operations on the Property, or (iii) the generation, manufacture, refining, transportation, treatment, storage, handling, disposal, discharge or spill of any Hazardous Materials on the Property by the Conservancy or its employees, contractors, subcontractors, agents, subtenants or licensees. The Conservancy shall defend any action, suit or proceeding brought against the City in connection with the foregoing, and in doing so it shall use independent counsel selected by the Conservancy and reasonably approved by the City. The provisions of this subsection (f) shall be in addition to any other obligations and liabilities the Conservancy may have to the City at law or equity and shall survive the expiration or earlier termination of this Lease.

(g) The City hereby represents and warrants that, as of the date of this Agreement, the City has no knowledge of the presence of any Hazardous Materials at, on or under the Property.

5.0 **Miscellaneous.**

5.1 **Assignment.** The Conservancy shall not transfer or assign its rights or obligations under this Agreement.

5.2 **Dispute Resolution.**

5.2.1 **Construction and Interpretation.** Each of the parties has had the opportunity to have its legal counsel review this Agreement on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the parties. Neither the form of this Agreement, nor any language herein, shall be construed or interpreted in favor of or against either party hereto as the sole drafter thereof.

5.2.2 **Forum and Venue.** Any and all disputes, claims and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia.

5.2.3 **Governing Law.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the City and the Conservancy in connection with this Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of laws or conflict of laws rules or provisions, whether of the

Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia.

- 5.3 **Modifications.** This Agreement contains the complete understanding and agreement of the parties with respect to the matters covered herein and may not be modified except in a written instrument signed by the duly authorized representatives of each of the parties hereto.
- 5.4 **No Third-Party Beneficiaries.** Notwithstanding any other provision of this Agreement, the City and the Conservancy hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City or the Conservancy; (iii) no individual or entity shall obtain any right to make any claim against the City or the Conservancy under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether that individual or entity is named in this Agreement.
- 5.5 **Notices.** All notices, offers, consents, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U. S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To the Conservancy:

Monroe Park Conservancy
1643 Monument Avenue
Richmond, VA 23220

B. To the City:

Attn: Chief Administrative Officer
900 E. Broad Street, Room 200
Richmond, Virginia 23219

with a copy to:

City Attorney
900 E. Broad Street, Suite 400
Richmond, Virginia 23219


Either party may change any of its address information given above by giving notice in writing stating its new address to the other party.

Effective as of the date first written above.

SIGNATURE PAGE TO FOLLOW

THE CITY OF RICHMOND, VIRGINIA


Date: 15th June, 2018

By: 
Selena Cuffee-Glenn
Chief Administrative Officer

Approved as to form:


Assistant City Attorney

MONROE PARK CONSERVANCY

By: 
Name: Alice McGuire Massie
Title: President, Monroe Park Conservancy
Date: June 5, 2018

1. ALL EXISTING UTILITIES SHOWN ON THIS PLAN ARE TO BE MAINTAINED AND PROTECTED. ANY CHANGES TO THESE UTILITIES SHALL BE APPROVED BY THE APPROPRIATE AGENCIES.
 2. ALL NEW UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL ELECTRICAL CODE (NEC) AND THE NATIONAL FIRE ALARMS CODE (NFPA).
 3. ALL NEW UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL MECHANICAL CODE (IMC) AND THE INTERNATIONAL PLUMBING CODE (IPC).
 4. ALL NEW UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL MECHANICAL CODE (IMC) AND THE INTERNATIONAL PLUMBING CODE (IPC).
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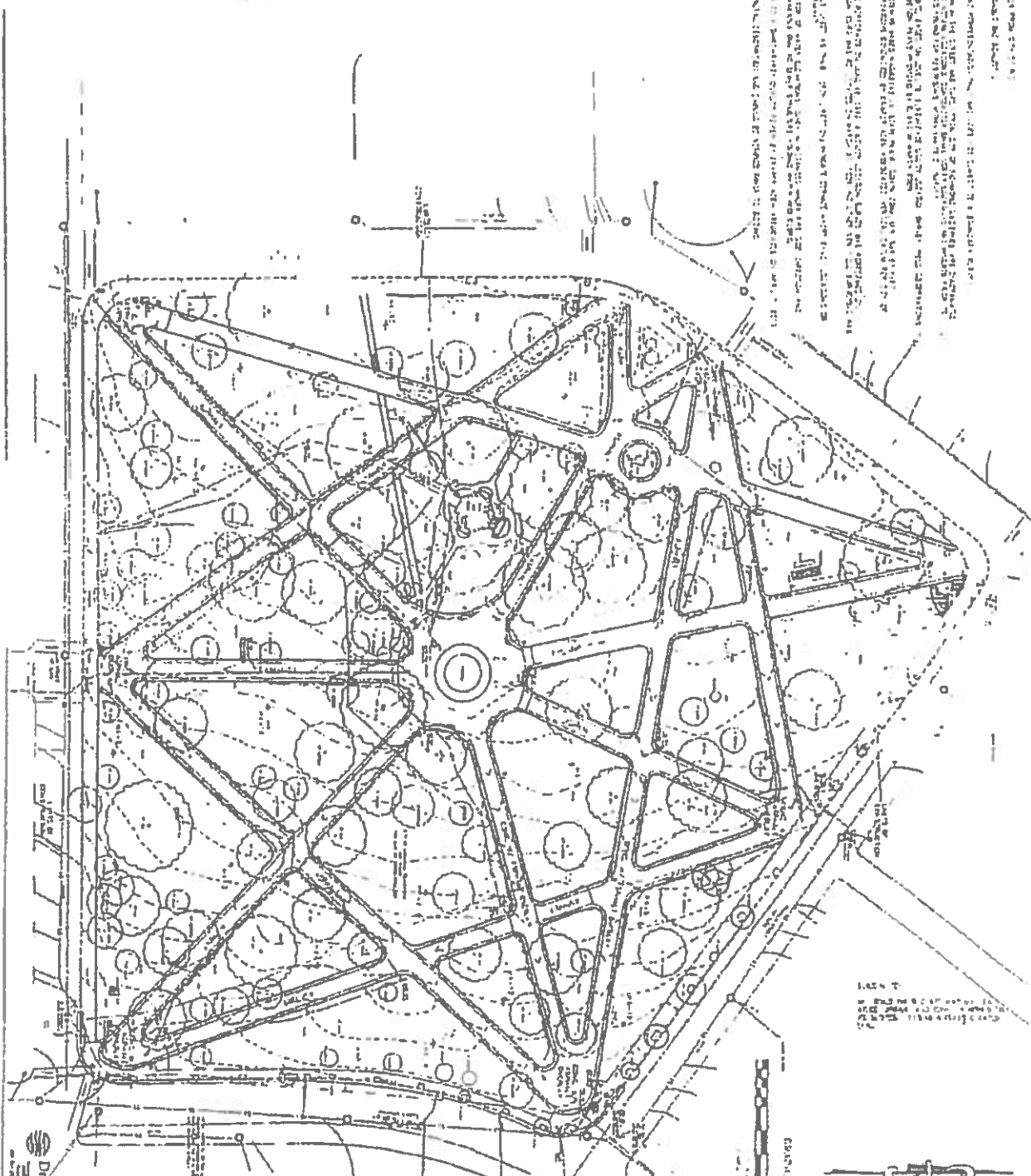


EXHIBIT
 A



C2.1

OCT 30, 2009 REVISIONS

EXISTING CONDITIONS
 PERMIT SET
 Monroe Park Renovation and Restoration

Richmond, Virginia

01-0000 PROJECT/SET/DATE/NO. 001/001
 11/10/09 11/10/09





Exhibit B

30 October 2017

Descriptions of Additional Work to Monroe Park Outside of Base Contract:

Checkers House Upgrades

New work (outside of base contract) includes upgrades of the interior space to accommodate tenants in both the first and second levels of the building. Renovation upgrades include demolition of interior walls, structural support of the slab, electrical, mechanical conditioning of the space and interior finishes.

Laurel Street Pavilion

A pavilion and plaza will be added to the south-west corner of the park. The pavilion will be an open-air flexible event space within an open plaza. The pavilion is to be constructed of steel with a wood framed, copper roof. The plaza will include permeable pavers, seat walls to match the Checkers House plaza, lighting and landscaping.

Portland Loo

A standalone bathroom structure will be added to the North West corner of the park. The structure is premanufactured and delivered to the site by Portland Loo. The Portland Loo will provide a low maintenance restroom available to all members of the community. The restroom will tie into City infrastructure for sanitary and water. Electrical will be supplied from the service within the park.